



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Anibal Garcia
807 Waverly Street
Framingham, MA 01702

Re: Asbestos Worker Cert. #AW 009642

**NOTICE OF PROPOSED
LICENSE ACTION AND HEARING
No. 06-002**

June 8, 2006

I. INTRODUCTION

This Notice of Proposed License Action and Hearing is issued by the Department of Environmental Services, Air Resources Division to Anibal Garcia, pursuant to RSA 541-A:30, RSA 141-E:10 and He-P 5008.07. The Air Resources Division is proposing that the Department of Environmental Services revoke the Asbestos Worker Certificate #AW 009642 held by Anibal Garcia, based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Air Resources Division ("the Division") is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Anibal Garcia is an individual having a mailing address of 807 Waverly Street, Framingham, MA 01702.

III. SUMMARY OF FACTS AND LAW SUPPORTING PROPOSED ACTION

1. RSA 141-E:4, I.(h) formerly authorized the Commissioner of the Department of Health and Human Services ("DHHS") to adopt rules relative to the training and certification of individuals engaged in asbestos abatement activities, such requirements to be at least as stringent as those of the U.S. Environmental Protection Agency. Such rules were adopted in He-P 5000, *Asbestos Management Rules*.
2. NH Laws of 2004, Chapter 257:18, transferred the statutory responsibilities and rules of the Bureau of Environmental and Occupational Health within the Office of Community and Public Health, DHHS, to the Department of Environmental Services ("DES") on July 1, 2004. In particular, the asbestos licensing personnel and their duties pursuant to RSA 141-E were transferred to DES.
3. NH Laws of 2005, Chapter 249, amended RSA 141-E to change all references to DHHS to DES.

4. RSA 141-E:11 authorizes DES to issue certificates of training to individuals who engage in asbestos abatement activities.
5. He-P 5008.04(g) requires each applicant for a certificate to provide training course documentation which shall show training to be current at the time of application by submission of a copy of the dated training certificate to DES.
6. On April 14, 2006, the Division received an application for certification as an asbestos abatement worker from Anibal Garcia, which included a training document purporting to show completion of a 32-hour asbestos abatement worker training course given by ECT, Inc., dated November 25, 2005.
7. DES issued Asbestos Worker Certificate number AW 009642, dated April 17, 2006, ("the Certificate") to Anibal Garcia, to allow Mr. Garcia to engage in asbestos abatement, relying on the veracity of the application submitted by him.
8. He-P 5008.07 authorizes DES to deny or revoke the certification of a person who submits false or fraudulent information on an application.
9. Upon further review of the training document submitted with Mr. Garcia's application, its authenticity came into question by the Division.
10. On May 12, 2006, the Division contacted ECT, Inc., and learned that ECT, Inc., did not provide a 32-hour asbestos abatement worker training course during the week of November 21st through the 26th in 2005.

IV. VIOLATIONS ALLEGED

1. Anibal Garcia violated He-P 5008.04(g) by not completing the necessary training for certification as an asbestos abatement worker.
2. Anibal Garcia violated He-P 5008.07 by submitting false or fraudulent information with his application for certification as an asbestos abatement worker, received by the Division on April 14, 2006.

V. PROPOSED ACTION

1. Based on the violations identified in IV, above, the Division proposes that DES revoke the Asbestos Worker Certificate #AW 009642, dated April 17, 2006.

VI. HEARING, REQUIRED RESPONSE

Mr. Garcia has the right to a hearing to contest these allegations before the proposed license action is taken. A hearing on this matter has been scheduled for **Monday, August 28, 2006**, at **1:00 p.m.** in **Room C-110** of the DES offices at **29 Hazen Drive** in Concord, New Hampshire. **Pursuant to Env-C 601.06, Mr. Garcia is required to respond to this notice.** Please respond **no later than July 13, 2006**, using the enclosed colored form as follows:

1. If Mr. Garcia plans to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If Mr. Garcia chooses to waive the hearing, please sign the waiver (lower portion) and return it to the DES Legal Unit. If Mr. Garcia waives the hearing, DES will revoke the Permit.
3. RSA 541-A:31, III(e) provides that Mr. Garcia has the right to have an attorney present to represent Mr. Garcia at Mr. Garcia's expense. If Mr. Garcia chooses to be represented by an attorney, the attorney must file an appearance and submit proposed findings of fact to the person conducting the hearing.
4. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which Mr. Garcia and any witnesses Mr. Garcia may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross examination.
5. **If Mr. Garcia wishes to have a hearing but is unable to attend as scheduled, Mr. Garcia must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled.** If Mr. Garcia does not notify the DES Legal Unit in advance and does not attend the hearing, the hearing will be conducted in Mr. Garcia's absence in accordance with Env-C 204.09.
6. If the Permit is an occupational license, under RSA 541-A:31, III(f), Mr. Garcia has the right to request DES to provide a certified shorthand court reporter at Mr. Garcia's expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

Information regarding this proposed license action may be made available to the public via the DES Web page (www.des.nh.gov). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.

COPY for RRS
Robert A. Scott, Director
Air Resources Division

ec: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Pamela G. Monroe, Compliance Bureau Administrator, DES Air Resources Division
Barbara Hoffman, Enforcement Section Supervisor, DES Air Resources Division
cc: Gretchen Hamel, DES Legal Unit Administrator

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ANIBAL GARCIA IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.

PLEASE RESPOND NO LATER THAN July 13, 2006

APPEARANCE On behalf of Anibal Garcia:

_____ I will attend the hearing scheduled for Monday, August 28, 2006 at 1:00 p.m. in Room 110 of the DES offices at 29 Hazen Drive in Concord, New Hampshire.

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

WAIVER OF HEARING On behalf of Anibal Garcia:

_____ I certify that I understand my right to a hearing regarding the revocation of Asbestos Worker Certificate #AW 009642, dated April 17, 2006 issued by DES and that I hereby waive that right, and relinquish the Certificate (original certificate enclosed).

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

RETURN THIS PAGE ONLY TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095